

REMARKS

This is in response to the Office Action that was mailed on January 17, 2006. Claims 4 and 37 are cancelled – without prejudice to their reassertion in this or a continuing application – in order to expedite the prosecution of this application. Minor formal amendments are made to claims 1 and 27. No new matter is introduced into the application by this Amendment. Claims 1-3, 5-12, 14-18, 20-24, 26-32, and 41-49 remain pending in the application.

Claims 1-3, 7-12, 14-18, 20-24, 31, 32, and 42-48 were rejected under 35 U.S.C. §102(b) as being anticipated by GB 2 093 679 A, a 1982 publication, inventor Judith L. Oven (“Oven”). Claims 4, 5, 26, and 37 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oven in view of US 5,529,800 (Bourns). The rejections are respectfully traversed.

Each of claims 1-3, 5, 7-12, 14-18, 20-24, 26, 31, 32, and 42-48 expressly excludes sugar-in-oil suspensions. Oven, on the other hand, relates to compositions that contain 10-35 weight-% sugar in 45-65 weight-% oil. Manifestly, the present claims are not anticipated by Oven. The Examiner has not shown that persons of ordinary skill in the art would be motivated to remove the sugar/oil components from the Oven dessert compositions, and thus the Examiner has failed to establish that any of the present claims includes subject matter which is *prima facie* from the Oven disclosure.

Each of claims 1-3, 5, 7-12, 14-18, 20-24, 26, 31, 32, and 42-48 expressly specifies “an adhesiveness, measured by the collet adhesion test, of greater than” 85% or more. The Examiner’s statement of the rejection fails to fully address this significant feature of the present invention. The Examiner provides only the unsubstantiated allegation that the Oven “product

inherently [has] an adhesiveness of at least 90%”. There is no technical basis in the record for believing that the pourable sugary composition of Oven has an adhesiveness of at least 90%. Applicants’ disclosure relating to adhesiveness is in the context of compositions that are expressly stated by the claims not to be sugar-in-oil suspensions.

All of the claims herein expressly require that the particle size distribution in the claimed compositions be monomodal. The Examiner cites line 122 on page 1 of Oven as teaching “a monomodal range of 1-10 microns”. What Oven really teaches at that point is “milling until an average solids particle size ... in the range 1 to 10 microns is achieved. It is found that compositions according to the invention in which at least 50% of the particles have a diameter less than 5 microns are storage stable”. Compositions in which half the particles have one size implicitly have other particles of a different size. The Examiner is respectfully requested to explain why the term “monomodal” appears in his statement of the Oven teachings.

Thus, there is a clear line of distinction between the presently claimed compositions and the sugar/oil compositions of the Oven publication. Additionally, the presently claimed compositions have significant properties (adhesiveness and monomodal particle distribution) that are not suggested in the reference. Clearly, the rejections over Oven as they are presently stated are not sustainable. Withdrawal of the rejections based on the Oven reference is respectfully solicited.

Claims 27-30 and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,362,512 (Cabrera) in view of US 4,005,225 (Craig). The rejection is respectfully traversed.

Each of claims 27-30 and 49 expressly specifies “an adhesiveness, measured by the collet adhesion test, of greater than” 85% or more. The Examiner’s statement of the rejection fails to fully address this significant feature of the present invention. The Examiner does provide the unsubstantiated allegation that the Cabrera “product inherently [has] an adhesiveness of at least 85%”. There is no basis in the record for believing that the liquid bread improver of Cabrera, which can contain up to 95 weight-% liquid oil, has an *adhesiveness* of at least 85%.

Claims 27-30 and 49 expressly require that the particle size distribution in the claimed compositions be monomodal. The Examiner cites line 55 in column 1 of Cabrera as teaching “a monomodal size of less than 10” microns. What Cabrera really teaches at that point is “the average particle size of the particles present in the composition [is] less than 50 μm ”. The Examiner is respectfully requested to explain the rationale for his use of the term “monomodal” in connection with the Cabrera teachings.

Thus, there is a clear line of distinction between the presently claimed compositions and the compositions of Cabrera. Additionally, the presently claimed compositions have significant properties (adhesiveness and monomodal particle distribution) that are not suggested in the reference. Clearly, the rejection over Cabrera in view of Craig as presently stated is not sustainable. Withdrawal of the rejection based on the Cabrera reference is respectfully solicited.

Manifestly, the actual nature of the present invention differs significantly from anything disclosed by Oven or by Cabrera and Craig. Applicants respectfully submit that the claims herein are clearly distinguished over the prior art, and should be allowed.


Application No.: 10/030,966

Docket No.: 0290-0180P

If the Examiner has any questions concerning this application, he is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008.

Dated: April 13, 2006

Respectfully submitted,

By  #28,781
Paul C. Lewis
Registration No.: 43,368
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Rd
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant